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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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September 14, 1998

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket 98-146

Dear Secretary Salas:

Enclosed are an original and four (4) copies of the Comments of the American Public Power Association in the Proceeding referenced above. An additional copy is being delivered to the International Transcription Service, Inc.

Sincerely,

Sean A. Stokes

cc: Service List

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	CC Docket 98-146
Capability to All Americans in a Reasonable	)	
and Timely Fashion, and Possible Steps	)	
to Accelerate Such Deployment	)	
Pursuant to Section 706 of the	)	
Telecommunications Act of 1996	)	

To the Commission:

COMMENTS OF THE AMERICAN PUBLIC POWER ASSOCIATION

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To the Commission:

COMMENTS OF THE AMERICAN PUBLIC POWER ASSOCIATION

The American Public Power Association (APPA) submits these comments in response to the Commission's Notice of Inquiry (*NOI*) on the rapid deployment of advanced telecommunications capacity to all Americans. APPA is the national service organization representing the interests of more than 2,000 public, not-for-profit electric utilities that provide electricity to one in every seven Americans in the continental United States. APPA's members include municipalities, counties, authorities, states and public utility districts (collectively "municipal electric utilities" or "public power utilities" for the purposes of these comments). Several large cities operate their own electric utilities, including Los Angeles, Seattle, Cleveland, Nashville, Jacksonville, San Antonio and Austin. About three-quarters of APPA's members serve rural communities with populations of less than 10,000.

A hundred years ago, the advent of electricity promised to improve the world dramatically for those who had access to it. Unfortunately, for some Americans, such improvement was slow in coming, as the private sector focused on the most lucrative markets and left rural and low-

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Summary

Public power systems are in a unique position to foster the rapid deployment of advanced telecommunications infrastructure in a manner consistent with the underlying goals of the Telecommunications Act and Section 706. Public power entities are directly responsive and accountable to the people that they serve, and are therefore inherently focused on providing the necessary infrastructure and capabilities that their communities need to flourish.

APPA submits that the Commission can go a long way toward meeting the requirements of Section 706 by ensuring that public power utilities have a full and fair opportunity to provide or facilitate the provision of telecommunications services in their communities. The Commission has ample authority under the Telecommunications Act to do so; it need only apply the Act as written. In particular, the Commission should adhere to the key definitions in the Act, which were carefully crafted to encourage municipal involvement in telecommunications. It should vigorously apply its preemption authority under Section 253 of the Act to remove all state and local barriers to entry by "any entity," including any public power utility. If the Commission believes that new interpretations or programs are necessary to accommodate new developments since the Act became law, it should ensure that such interpretations or programs do not discriminate against public power utilities.

income communities literally in the dark. Recognizing the vital role that electricity could play in advancing their economic well-being and quality of life, thousands of these communities established electric utilities of their own. Now, history is repeating itself in the telecommunications area. Once again, the private sector is preoccupied with serving the most profitable markets, and rural and low-income communities are at risk of falling behind in obtaining the benefits of the Information Age. And once again, many communities are ready, willing and able to take their destinies into their own hands.

In the *NOI*, the Commission expressed a general preference for private-sector deployment of advanced telecommunications capabilities, but it recognized that this goal could conflict with Congress' "instruction" in Section 706 of the Telecommunications Act that the Commission "promote the availability of telecommunications services generally and advanced services in particular to specific segments of the population, including low income people, people in rural areas, schools, classrooms, libraries and health care facilities." *NOI*, ¶ 5. The Commission committed itself "to following this instruction while also seeking to promote the deregulatory and pro-competitive goals of the Act," and toward that end, it has expressly inquired about the role that public power utilities can play in helping the Commission fulfill its responsibilities under Section 706. *Id.*, ¶¶ 5, 48.

As detailed below, public power utilities are uniquely well-suited to foster the rapid deployment of advanced telecommunications capabilities, particularly in rural areas. To survive in their core business of providing electric power in the 21st Century, they have constructed, or will construct, highly sophisticated broadband telecommunications facilities. These same facilities can readily support the provision of voice, video, data and other advanced communications services, either by the public power utilities themselves or by other entities. Public power utilities also have

communities they serve. They have skilled work forces that are accustomed to dealing with complex technologies. They have access to poles, conduits, ducts, rights of way and direct connections to their customers. They know how to bill customers and provide prompt and efficient customer support. They also have a long and rich tradition of universal service and community involvement.

APPA submits that the Commission can go a long way toward meeting the requirements of Section 706 by ensuring that public power utilities have a full and fair opportunity to provide or facilitate the provision of telecommunications services in their communities. The Commission has ample authority under the Telecommunications Act to do so; it need only apply the Act as written. In particular, the Commission should adhere to the key definitions in the Act, which were carefully crafted to encourage municipal involvement in telecommunications. It should vigorously apply its preemption authority under Section 253 of the Act to remove all state and local barriers to entry by "any entity," including any public power utility. If the Commission believes that new interpretations or programs are necessary to accommodate new developments since the Act became law, it should ensure that such interpretations or programs do not discriminate against public power utilities.

I. LESSONS FROM THE HISTORY OF THE ELECTRIC POWER INDUSTRY

There are many striking parallels between the evolution of the electric power industry and the telecommunications industry. APPA offers the following brief summary of that history in the hope that the Commission will glean some valuable lessons from it.

When the "Age of Electricity" dawned in the 1880's, it was greeted with just as much excitement as the new "Age of Information" generates today:

> When electric power first emerged from the back rooms of

> inventors such as Charles Brush and Thomas Edison, it hit nineteenth century America with a dazzling impact. What fire had been for early man was a rough draft for the force electricity took on in lighting cities, running hundreds of thousands of industrial motors, engendering extensive networks of trolley car lines, and sparking the birth of mass communications. Even more than the railroads of a few decades before, it quickly outstripped the understanding and control of social institutions.[1]

According to popular myth, the Age of Electricity began in 1882, when Thomas Edison opened the first central electric generating station on Pearl Street in New York City.[2] The development of the electric power industry followed a path that should give pause to those who believe that private profit-maximizing firms can or will provide advanced services to all Americans in the early years (or decades) of their operations, when the allure of the most profitable markets is most compelling.

Privately owned electric utilities conceptualized the process of electrification as "a series of markets that could best be exploited in a particular sequence" and did not seek to furnish electricity in all markets for half a century.[3] In the 1880s, they focused first on lighting large cities, commercial establishments and the homes of the very wealthy. As a calculated marketing strategy, they "made the new technology synonymous with wealth, power and privilege."[4] After 1888, privately-owned electric utilities emphasized electrifying urban trolley systems, as this enabled them to maximize daytime use of generating capacity built primarily for lighting streets at night. After 1900, they turned to the industrial sector. Only after 1910 did the private utilities

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[1] R. Rudolph and S. Ridley, Power Struggle: The Hundred Year War Over Electricity, at 10 (1986) (hereafter "Power Struggle").

[2] R. Morgan, T. Riesenberg and M. Troutman, *Taking Charge: A New Look at Power* at 5 (1976); *Power Struggle* at 28-29. In reality, power systems had already been built in Cleveland, Ohio, Wabash, Indiana, and Butler, Missouri. American Public Power Association, *Public Power In America: A History* at 1-2 (1987).

[3] D. Nye, *Electrifying America* at 26-27 (1990); *Power Struggle* 30-31.

[4] Power Struggle at 382; see also Electrifying America at 28-32.

begin to electrify the homes of common people living in the cities. Farmers and others in rural settings had to wait until the 1930s.[5]

Many smaller communities, literally left in the dark by the private utilities, formed electric utilities of their own. By 1890, more than 150 towns were operating lighting and power utilities, and in the next decade, that number multiplied at a rapid pace.[6] Because these public power utilities typically charged prices that were half the rates charged by private utilities, "common people gained access to the miracle of electric lights, while in other cities only the wealthy could afford to switch from traditional gas or kerosene lamps, [and] commercial businesses faced higher prices."[7]

Public power utilities also filled gaps left by private utilities and introduced much-needed competition in many larger cities. For example, despite stiff resistance from the competing private utility, the City of Detroit established a municipally owned power system that reduced prices by fifty percent within seven years and extended service to the stores and homes of common people. Similar experiences elsewhere caused the popularity of public power to soar in the decade between 1897 and 1907, resulting in the formation of between 60 and 120 new systems each year.[8]

During the 1880s and 1890s, many cities granted franchises to all who sought them, believing that this would result in maximum competition and low prices in the long term. As they learned to their dismay, that strategy had precisely the opposite effect:

> [T]hese cities became ensnared in the wires of the new technology. Streets were often wired by one company and rewired by competing companies. In commercial districts where demand was high and competition was thick, forests of poles strung

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5 Power Struggle at 29-30.

6 American Public Power Association, *Public Power in America: A History* at 2.

7 Power Struggle at 32.

8 *Power Struggle* at 32-38.

> with wires appeared on the streets. In other districts where there was demand for only a few lights in each house, people had no access to electricity.
>
> Vicious infighting between companies erupted. It resulted in increasing failure of service, higher costs, and gradual consolidation under companies that gained a political and economic upper hand.[9]

For example, in 1897 the Commonwealth Edison Company in Chicago swallowed up its 23 competitors virtually overnight, leading the Chicago *Tribune* to observe that, "Beginning this morning the sun and the Gas Trust [have] a monopoly of all the light with which Chicago is to be blessed."[10] Likewise, in 1907, the Consolidated Edison Company acquired control of 98 percent of New York City's supply of electricity.[11]

Similar experiences throughout the country established "an ominous trend for those who had watched the centralization of railroads and their soaring rates and political scandals."[12] Technological advances in the transmission and generation of electric power reinforced that trend, by enabling private utilities to operate economically on a much larger scale. The major private utilities could take advantage of the new technology by absorbing their inefficient competitors and growing successively larger.

As the power of the private utilities grew, the only thing that they needed to consolidate their gains was a plausible rationale that would overcome the public's affection for public power utilities. In 1898, Samuel Insull, one of the most influential of the leaders of private electric utilities, furnished that rationale with the argument that electric service should be treated as a "natural monopoly." Insull proposed that franchises be granted to only a single entity in each

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9 Power Struggle at 31.

10 *Id.*

11 *Id.*

12 *Id.*

geographical area and that state agencies fix rates and establish standards of performance for these entities under a system of uniform records and accounting.[13]

At first, Insull's ostensible attack on free enterprise and competition startled the leaders of the other major private utilities. They eventually became enthusiastic supporters, however, when they realized that they could overwhelm the staffs of state regulatory commissions and effectively eviscerate state control by pouring vastly more technical and financial resources into state rate proceedings than their opponents could afford, and then recover their expenses through rate increases. The states also found Insull's arguments irresistible, and between 1907 and 1921, every state but Delaware established a state commission to regulate electric utilities.[14]

As the "natural monopoly" concept took hold, the major private utilities redoubled their efforts to acquire competitors. Using interstate "holding companies," they lumped their new acquisitions together with "fantastic aggregates of geographically and socially unrelated systems scattered from hell to hallelujah," including real estate companies, water companies, street and railroad ventures, and fuel and engineering firms, ranging from the Philippines to central and southern Europe and South America.[15] As a result, "[f]or the new state regulatory agencies, it became nearly impossible to gain access to accounting figures, which faded from one set of books to another as power company operations were carried across state lines."[16]

Following the first World War, the major private electric utilities mounted a massive propaganda campaign -- at the expense of ratepayers -- to trumpet the virtues of their natural monopolies and to discredit public power utilities. These efforts included flooding grade schools, high schools, colleges, libraries, and civic organizations with literature; investing heavily in

[13] Power Struggle at 38-42.
[14] Power Struggle at 38-41.
[15] Power Struggle at 38-41.
[16] Power Struggle at 43.

newspaper and radio advertising; lavishing entertainment on media executives to ensure the dissemination of favorable news stories; subsidizing advantageous research at leading universities; and enlisting thousands of industry executives and employees as speakers on utility matters.[17]

The information campaign often went beyond the objective and the benign. As in the McCarthy period of the 1950s, the private utilities viciously characterized the advocates of public power as "un-American" and "Bolshevik" and as "an unholy alliance of radicals."[18] Franklin Delano Roosevelt denounced these efforts as "a systematic, subtle, deliberate and unprincipled campaign of misinformation and propaganda, and if I may use the words – 'of lies and falsehoods.'"[19]

In the 1920s, private electric utilities reached the zenith of their power. By the middle of the decade, Insull and fifteen other holding company leaders controlled 85 percent of the nation's electricity and seemingly had every advantage over public power utilities -- a vertically and horizontally integrated industry, the ability to operate economically on a regional scale, ineffective regulation by state commissions, vast financial support from Wall Street, and dominance of public relations.[20] Not surprisingly, public power suffered, declining from a peak of 3,066 systems in 1923 to 2,320 systems within four years.[21] Still, enough public power utilities remained to raise "troubling questions about fair rates, democratic control, and public service that would be widely debated again in the 1930s."[22]

In 1928, as public concern rose about the size, prices and practices of the private electric utilities, the Federal Trade Commission launched a four-year investigation of the so-called "Power

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[17] Power Struggle at 43.
[18] Power Struggle at 43.
[19] Franklin Delano Roosevelt, 1932 Campaign Speech, quoted in *Power Struggle* at 52.
[20] Power Struggle at 46-52; Electrifying America at 182-83.
[21] Power Struggle at 47.
[22] Electrifying America at 183.

Trust" of the major private utilities and their far-flung empires. In a scathing report that ran to eighty-four volumes, the FTC copiously documented a broad range of abuses, including financial manipulation, stock watering, padding of operating expenses, overpayment of executives, questionable transactions with subsidiaries, milking of operating companies, and massive lobbying and propaganda misdeeds.[23]

In the 1932 presidential election campaign, electric power became the "dominant" issue. On one side, President Hoover argued that "[t]he majority of men who dominate and control electric utilities belong to a new school of public understanding as to the responsibilities of big business to the people."[24] On the other side, Franklin D. Roosevelt maintained that:

> [W]here a community, or a city, or a county, or a district, is not satisfied with the service rendered or the rates charged by the private utility, it has the undeniable right as one of its functions of government . . . to set up . . . its own governmentally owned and operated service . . . the very fact that a community can, by vote of the electorate, create a yardstick of its own, will, in most cases, guarantee good service and low rates to its population. I might call the right of the people to own and operate their own utility a birch rod in the cupboard, to be taken out and used only when the child gets beyond the point where more scolding does any good.[25]

Over the last six decades, public power utilities have repeatedly proven that Roosevelt's "yardstick" and "birchrod" concepts work well in practice. As a result, public power utilities now provide electricity to approximately one out of every seven Americans and generate annual revenues exceeding $32 billion. In recent years, these concepts have shown themselves to be equally effective in the telecommunications area, as scores of communities that operate their own electric utility systems have now begun to offer their residents communications services. Several examples are discussed below and in greater detail in Attachment A. Ultimately, if advanced

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[23] Taking Charge at 7-8; Power Struggle at 51, 195.

[24] President Hoover's comments are quoted in *Power Struggle* at 66.

services are indeed to be provided to all Americans on a timely basis then all communities must be afforded the opportunity to provide for themselves.

II. BECAUSE OF THEIR PROXIMITY AND RESPONSIVENESS TO THE COMMUNITIES THAT THEY SERVE, PUBLIC POWER UTILITIES ARE UNIQUELY WELL-SUITED TO FURTHER THE GOALS OF SECTION 706

For the following reasons, public power utilities are uniquely well suited to assist in the rapid deployment of advanced telecommunications infrastructure.

A. Utilities Require Sophisticated Telecommunications Networks In Order to Operate Their Electric Systems

To survive in the 21st Century, electric utilities will have to operate sophisticated telecommunications networks that enable them to provide safe, reliable and efficient electric service to the public. In terms of size, scope and capabilities, electric utility telecommunications networks rival and, in many instances, exceed the systems operated by commercial telecommunications providers. These networks consist of fiber optic systems, point-to-point microwave facilities, point-to-multipoint multiple address systems, and two-way land mobile radio systems. The necessity of operating these telecommunications networks has placed all electric utilities in a strong position to foster the development of advanced telecommunications capabilities.

Current estimates of the utility industry's aggregate operating expenditures for telecommunications range from two to four billion dollars a year. Electricity is delivered to the end-user as needed literally at the flip of a switch, and as such, it constitutes the ultimate "just in time" manufacturing, inventory and delivery system. As a result, electric utilities have one of the greatest requirements for "real-time" communications capabilities in the nation. These demands are expected to increase in the future as additional energy providers obtain access to the

[25] Franklin Delano Roosevelt's speech, delivered in Portland, Oregon in September 1932, is

interconnected electric grid and thereby introduce an additional level of complexity to balancing the electric load on the grid.

Utilities rely on their telecommunication networks to perform the following critical functions:

- Protective relaying – monitoring and controlling of electric transmission systems to detect and isolate faults on the electric grid within milliseconds;
- System Control and Data Acquisition (SCADA) – monitor and remotely control electric system components including capacitor banks and emissions levels;
- Interconnect substations, pumping stations and generating plants;
- Interconnect mobile radio base stations and backhaul service restoration dispatch traffic; and
- Automated plant security and alarms systems

In addition to these traditional functions, electric utilities are implementing information technology-dependent strategies to revamp both the supply side and the demand side of their operations. On the supply side, numerous telecommunications-based applications are now being developed and installed. These applications include:

- Network control;
- Data collection and management;
- Power brokerage;[26]
- Power plant emissions trading;
- Outage handling;
- Service restoration;
- Automatic meter reading; and
- Remote service connection and disconnection.

On the demand side, applications include systems for:

- Real-time pricing;
- Direct load management;
- Demand-side management;
- Power quality monitoring;
- Detailed billing (appliance-by-appliance, machine-by-machine, minute-by-minute);
- Energy usage analysis; and

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quoted in *Taking Charge* at 9.

[26] Though in its infancy, the utility industry's usage of the Internet for wholesale price scheduling and brokering may be considered one of the single largest applications of electronic commerce.

- Improved responses to customer needs (e.g., electronic answering, rapidly identifying and solving problems.)

In order to accommodate these advanced applications, large and small electric utilities across the country are upgrading their telecommunications infrastructure. In addition to supporting core electric power-related functions, this infrastructure can support the provision of voice, video and high-speed data and other interactive services. The broadband capabilities of utility fiber systems are particularly suited to multiple applications, as utility fiber optic networks often are constructed with reserve capacity to accommodate future growth and/or the needs of new competitive entrants. Often additional fibers can be added to a planned system at an incremental cost. In addition, the advances in fiber optic technologies allow for dramatic expansions in the capacity of existing systems simply by changing the electronics at either end of the fiber.

According to the 1997 UTC *Report on Fiber Optic Applications and Developments in the Utility and Gas Pipeline Industries*, utilities have installed over 40,000 route miles of fiber optics representing over 750,000 fiber miles. Moreover, these utilities indicated that they intend to install an additional 36,000 route miles within the next three years. Of the utilities responding to the survey, over 53 percent were public power utilities. According to the survey, the average current cable mileage for public power utilities is 385.5 compared to 505.7 for investor-owned utilities. This is significant considering that the average number of customers served by public power utilities is much smaller than that of investor-owned utilities.

In addition, public power utilities have many assets and skill sets that would serve them well in the field of telecommunications. They have access to poles, ducts, conduits and rights-of-way. They have on-going relationships with residential, commercial and industrial customers.

They have experience in billing and servicing customers as well as trained work forces with expertise in installing and maintaining sophisticated networks. They also have a rich tradition of providing universal service.

B. Public Power Utilities Are Uniquely Responsive to Local Needs

Public power utilities are particularly suited to assisting in the deployment of advanced telecommunications capabilities because they are part of the local government and share its mission of promoting the community's economic, educational and cultural development. The vast majority of public power utilities in the U.S. are located in cities with less than 10,000 residents. As seen, these utilities emerged in response to the failure of private utilities to provide electrical service in their communities because private utilities viewed it as unprofitable. In these cases, communities formed municipal electric utilities to do for themselves what they viewed to be of vital importance to their quality of life and future economic prosperity. Once again, public power utilities are well-positioned to bring the infrastructure of the future to their communities by providing or facilitating the provision of advanced telecommunications capabilities.

Furthermore, many communities served by public power utilities in rural settings have not traditionally been the first to enjoy the benefits of economic development. These communities do not intend to allow this to happen with the information superhighway. Recognizing that advanced telecommunications infrastructure and capabilities are an essential element of our information and service industry economy, small towns and rural communities are naturally turning to their public power utilities for assistance.

The Commission has asked for comment on the economic incentive of potential providers to serve all communities. *NOI*, ¶ 61. Again, public power utilities are uniquely suited to meet this challenge. Municipal electric utilities have established, long term, relationships with the

communities that they serve, these relationships afford them with a keen understanding of the requirements of their communities. Because public power utilities are structured to provide low cost service, they can make advanced telecommunications services affordable to all sectors of the communities they serve. In many cases, public power utilities have fiber optic rings that pass close by key user groups such as schools, libraries and hospitals. Their ethic of universal service should also result in the development of creative local means of providing advanced services to target populations and thus lower the costs of federal and state universal service mechanisms.

Finally, because of their public ownership, public power utilities are directly accountable to the people they serve. This ensures not only that they provide service to all sectors of the community but also that they provide the types of service that a particular community desires. This is one reason why it is so important that the Commission define "advanced telecommunications capabilities" in a flexible manner that allows each community to obtain the types of services that they require.

C. Where Barriers to Entry Do Not Exist, Public Power Utilities Are Already Beginning to Deploy Advanced Telecommunications Capabilities

Public power utilities do not have a mere theoretical interest in deploying advanced telecommunications capabilities. In a growing number of communities around the country where barriers to entry do not exist, that interest is fast becoming a reality. Public power utilities are entering, or intend to enter, a variety of telecommunications markets. In 1998, Frost & Sullivan conducted a survey regarding utility activities in telecommunications. Out of the 270 respondents to the survey, 45.9 percent were municipal utilities, and over 40 percent of these municipal utilities serve a customer population of less than 5,000. Of these municipal utilities responding to the survey, 24 percent indicated that they intend to become Internet service providers, 22 percent

plan to provide cable television service, and 14 percent plan to become telecommunications carriers.[27]

Cities of all sizes served by public power utilities are deploying advanced telecommunications infrastructure through their public power system. In response to the FCC's request for information on specific examples of advanced telecommunications deployment, attached hereto as Attachment A, is a series of representative "case studies" studies, that provide key examples of the telecommunications activities that public power systems have undertaken in direct response to community needs. Typically, these are newer systems with high bandwidth capacity that are configured to support a range of service offerings from voice to high-speed data, to video. For example, in Palo Alto, California, the local public electric utility has constructed a state-of-the-art 26-mile fiber network with 144 to 288 strands of single mode fiber along each segment. It is commencing fiber-to-the-home trials that will deliver TCP/IP service over full duplex, switched Ethernet connections. Not to be outdone, the tiny town of Hawarden, Iowa, with a population of 2500, has a hybrid fiber optic/coaxial cable network providing its residents over 80 video channels, two phone lines, and high-speed Internet access.

In many instances, public power utilities are involved in public/private partnerships in which the municipal utility provides the underlying infrastructure and a new private telecommunications entrant provides the necessary electronics and switching to actually provide service. For years public power utilities have provided fiber capacity to interexchange carriers and competitive access providers. This has accelerated the pace of competition in many markets. Now, they are repeating the same process more broadly. For example, Pioneer Holdings, a subsidiary of MCI, is working in partnership with electric cooperatives and public power utilities

[27] 1998 Municipal and Cooperative Utilities Decision Maker Survey, Frost & Sullivan, Figure 6-13.

in numerous locations in Iowa and South Dakota to deploy advanced services. Without the participation of public power entities, new competitive entrants would not be able to enter many smaller markets. As the Frost & Sullivan Report notes, by making its fiber optic network available to other service providers, the municipality can reduce the need for future redundant infrastructure installation. The result is less disruption of property for new lines, and more use of existing infrastructure and rights-of-way at lower cost to both the community and the new entrant.[28]

In the *NOI* the Commission raises concerns about the adverse consequences of incumbents with market power. Public power systems are able to mitigate the effects of incumbent monopoly power by introducing facilities-based competition through the provision of telecommunications infrastructure to new competitive entrants in rural communities that otherwise may be the last to enjoy the benefits of advanced services. In addition, because of their non-profit basis, municipal utilities are able to provide consumers with a benchmark of the true cost of providing advanced telecommunications capabilities. In the face of such competition, incumbents may lower their prices, or accelerate their deployment of advanced services.

Finally, it should be recognized that municipal utilities offer potential private partners with a level of investment security and stability that they would not otherwise enjoy. This security comes from the public power system's intimate involvement, and role, in meeting the unique needs of the communities that they serve in a highly-representative manner.

III. WHAT THE COMMISSION SHOULD DO TO FACILITATE THE RAPID DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITIES

The Commission has asked for recommendations of actions that it can take to encourage the rapid deployment of advanced telecommunications capabilities to all consumers. In this part,

[28] Frost & Sullivan Survey, Section 7-5.

APPA first outlines the major policy objectives that it believes the Commission should apply. APPA then turns to the specific actions that it recommends the Commission take.

A. Policy Recommendations

1. The Commission Should Not Unduly Focus On The Private Sector As The Source Of Advanced Telecommunication Capabilities

Among the key goals of the Telecommunications Act are the introduction of competition, the removal of barriers to entry, the maintenance of competitive neutrality and non-discrimination, the promotion of maximum consumer choice among providers, and the rapid deployment of advanced telecommunications technologies for all consumers. In furthering these goals Congress emphasized the need for the Commission to encourage all potential providers to participate in bringing telecommunications competition to all markets. As Senate Majority Leader Trent Lott (R-MS) succinctly summarized the then pending legislation, the Act "constructs a framework where everybody can compete everywhere in everything," and "[t]oward that end, the removal of all barriers to and restrictions from competition is ... the primary objective [and] accomplishment of this legislation."[29] Similarly, the Commission has found that the "overriding" goals of the Telecommunications Act are to enable "*all* providers to enter *all* markets"[30] and to remove barriers that prevent consumers from choosing telecommunications providers "from as wide a variety of providers as the market will bear."[31] Consistent with these statements, the Commission has indicated in the *NOI* that it intends to afford advanced technology "every opportunity to

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[29] 141 Congressional Record at S.7906, June 7, 1995.

[30] *In the Matter of Classic Telephone, Inc. Petition for Preemption, Declaratory Ruling and Injunctive Relief,* CCBPol 96-10, *Memorandum Opinion and Order*, ¶ 25, 11 FCC Rcd 13082 (1996) ("Classic Telephone"), quoting *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, First Report and Order, FCC 96-325, ¶ 4 (rel. August 8, 1996) ("*Interconnection Order*") (*emphasis added*).

[31] Statement of William E. Kennard Before the Senate Subcommittee on Antitrust, Business Rights, and Competition (March 4, 1998) at 1 (Attachment B hereto).

flourish" by seeking "ways to make its deployment more efficient and *more inclusive*." *NOI*, ¶ 1 (*emphasis added*).

APPA applauds the Commission for recognizing that its approach under Section 706 must be inclusive of all areas of the country and all potential providers. To this end, the Commission should be careful not to adopt an overly narrow focus on private sector deployment of advanced telecommunications capabilities. To be sure, as the Commission notes in footnote 2 of the *NOI*, certain language in a Senate report describing a precursor to Section 706 suggests that the bill was aimed at accelerating "private sector" deployment of advanced telecommunications. This language, however, was not ultimately incorporated into the statutory language of Section 706. Furthermore, in the preamble to the Act describing its legislative purpose, Congress retained the words "rapid deployment of advanced telecommunications technologies" but conspicuously omitted any reference or limitation to the "private sector."

There is nothing in the Act to suggest that municipalities, and public power utilities in particular, should be denied a full and fair opportunity to contribute to the rapid deployment of advanced telecommunications. To the contrary, as demonstrated below, the legislative history of the Act demonstrates that Congress fully intended that public power utilities play a major role in deploying advanced telecommunications technologies.

Elsewhere in the *NOI*, the Commission indicates that it intends "to rely as much as possible on free markets and private enterprise to deploy advanced services." *NOI*, ¶ 5. APPA would support this approach if the Commission recognized that the principle of "free markets" encompasses the ability of consumers to choose not to purchase services from the private sector but to satisfy their needs through their own facilities -- as is the case with consumers who elect to purchase electricity from public power utilities. Furthermore, public power utilities and private

entities have competed and coexisted in the electric industry since its inception, to the benefit of the Nation. Moreover, there is no "firewall" between the public and private sectors, in fact, in many instances, public power utilities are partnering with private industry to deploy advanced telecommunications capabilities.

Notably, immediately after its statement that it intends to "rely as much as possible on private enterprise," the Commission goes on to observe that this intent must be tempered by Congress' instruction that the Commission "promote the availability of telecommunications services generally and advanced services in particular to specific segments of the population, including low income people, people in rural areas, schools, classrooms, libraries and health care facilities." *NOI*, ¶ 5. APPA draws comfort from the Commission's commitment to "following this instruction while also seeking to promote the deregulatory and procompetitive goals of the Act." *NOI*, ¶ 5.

2. The Commission Should Recognize that the Benefits of Section 706 Are Intended For All Americans

The primary goal of Section 706 is to seek ways to accelerate the deployment of advanced Telecommunication capabilities to all Americans including those members of the public who might not otherwise obtain access to such capabilities. As the Commission notes, "[a]dvanced capability and services can create investment, wealth and jobs. They can meaningfully improve the nation's productivity and educational, social and health care services. They can create a more productive, knowledgeable and cohesive nation." *NOI*, ¶ 1. In this sense, the goals of Section 706 are the embodiment of the policy discussions that took place in the early 1990s concerning the need for a "National Information Infrastructure" or an "Information Superhighway."

As metaphors, the terms "information infrastructure" and "information superhighway" are instructive

because they convey more than just the image of high bandwidth communications networks. Rather, they also connote that the underlying telecommunications facilities are as essential to the well being of communities today as electricity, water and roads. The Commission acknowledged this point in its Universal Service *R&O*, stating that Section 254 "recognizes the growing importance of technological literacy for successful participation in society" and Section 706 "would compliment the goal of widespread availability of telecommunications services."[32] All communities should have the ability to obtain access to these benefits.

In many areas of the country, public power utilities are the best, or even only, choice for providing access to advanced telecommunications capabilities. Public power utilities are owned by the communities they serve and are therefore highly responsive to community development interests. In this way, the interest of public power utilities in providing advanced telecommunications infrastructure parallels the goals of Section 706 and the Commission. That is, like Congress and the Commission, public power utilities seek to deploy advanced telecommunications capabilities in order to stimulate investment, create jobs, and enhance education, social and health care services. The Commission should therefore do everything possible to enable them to succeed.

3. The Commission Should Do Nothing to Disrupt the Competitive Balance in the Electric Power Industry

Many utilities believe that in order to remain competitive in a deregulated environment in which electricity is essentially a commodity, they will have to provide value-added services. Because of the synergies between telecommunications and their core competencies, many utilities have concluded that telecommunications and information services are a natural area for diversification. Of the 270 total respondents to the Frost &Sullivan Survey, 24 percent indicated

[32] *Universal Service R&O*, ¶ 604.

that they plan to compete in the telecommunications industry within five years.[33] While still in the early stages of development, a number of leading technology companies are working with utilities around the world to develop the ability to utilize electric distribution lines to conduct high-speed data communications. If this technology proves to be technically and economically viable it holds the potential for a dramatic increase in advanced technology capabilities and potential telecommunications competition.

Although promoting competition in the electric power industry is not a direct responsibility of the Commission, it should be aware of the significant effect that its decisions could have in that area. In light of the strategic role that telecommunications and information technologies will play as the electric industry goes through a period of profound change, it is vital that the Commission recognize that Congress and many states are now struggling to develop approaches that will preserve the competitive balance in the electric industry from which this country has benefited greatly for decades.[34]

No one has questioned that the Telecommunications Act of 1996 permits investor-owned and cooperatively-owned electric utilities to enter into new lines of business, form alliances with telecommunications providers of their choice, and offer consumers "one stop shopping" for energy, communications and other services.[35] Indeed, each month sees a growing number of investor-owned and cooperatively owned electric utilities entering into the telecommunications

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[33] Frost & Sullivan Survey, at Section 7-8.

[34] Congress' concerns about preserving healthy competition in the electric power industry is reflected in the statements of various members of Congress in a hearing on the role of public power in a competitive environment. S. Rep. No. 105-25, Part I, 105th Cong. 1st Sess. 85-92 (1997) (Attachment C hereto).

[35] Section 103 of the Telecommunications Act and the FCC's implementing orders and regulations, 47 C.F.R. § 1.4000 et seq., 61 Fed. Reg. 52887 (October 9, 1996), have effectively eliminated the constraints that the Public Utility Holding Company Act of 1935 had previously imposed on the ability of the major investor-owned electric utilities to provide telecommunications services.